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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,030	03/06/2002	Peyton W. Hall	TRIA:005	7597
36275 7590 01/24/2008 O'KEEFE, EGAN, PETERMAN & ENDERS LLP 1101 CAPITAL OF TEXAS HIGHWAY SOUTH #C200 AUSTIN, TX 78746			EXAMINER PATEL, NIHIR B	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/092,030	HALL ET AL.	
	Examiner	Art Unit	
	Nihir Patel	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10.30.2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 16-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on October 30th, 2007 have been fully considered but they are not persuasive. The applicant argues that Gill does not disclose an outer layer of the bladder being made of a chemically resistant composite. The examiner disagrees with the applicant's arguments. As stated on page 9 lines 20-25 of the applicant's specification, "This laminate may be composed of several polymeric layers including a polyamide fiber reinforcement layer for strength, several rubber layers for permeation resistance, and a thermoplastic layer to allow for thermal welding." Since Nylon is defined as polyamide fiber, the outer layer of the bladder of Gill is interpreted to be made of chemically resistant composite.
2. The applicant also argues that Petriello desires that the inner layer is chemically inert. The examiner disagrees. Petriello clearly states that the container is chemically inert not the inner layer as the applicant suggested. In response to applicant's argument that the Petriello reference concerns containers for fuel and propellants, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this instance, the structure of Gill anticipates the claimed invention since applicant's structure does not define any structural differences.
3. In reference to claims 3 and 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by designing the inner layer from thermoplastic polyurethane in order to prevent the stored liquid from being

contaminated, since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims **1, 16 and 27** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amended claims contains subject matter ("**an inner layer of a material other than a rubber**") which is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 27 is rejected under 35 U.S.C. 102(e) as being anticipated by Gill et al. (US 6,247,619).

8. As to claim 27, Gill teaches an apparatus that comprises a bladder 1 configured to hold a fluid (see abstract), wherein bladder comprises an outer layer of chemically resistant composite and an inner layer of a material other than a rubber (see column 3 lines 15-30 and column 4 lines 45-55); a spout 11 connected to the bladder and in communication with the inside of the bladder, wherein the spout comprises an output port and a fill port for filling the bladder with liquid (see column 3 lines 25-35); a cap 2 adapted to engage and close the fill port (see column 3 lines 5-10); and a tube 20 having a first end connected to the output port of the spout and having a second end connected to a fluid delivery fitting (see column 3 lines 10-15).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims **1-4, 7, 18, 22-26 and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gill et al. (US 6,247,619) in view of Petriello (US 3,229,014).
8. As to **claims 1, 23, 26 and 28**, Gill substantially discloses an apparatus that comprises a bladder **1** configured to hold a fluid (**see abstract**), a spout **11** connected to the bladder and in communication with the inside of the bladder, wherein the spout comprises an output port and a fill port for filling the bladder with liquid (**see column 3 lines 25-35**); a cap **2** adapted to engage and close the fill port (**see column 3 lines 5-10**); and a tube **20** having a first end connected to the output port of the spout and having a second end connected to a fluid delivery fitting (**see column 3 lines 10-15**) and an inner layer of a material other than a rubber (**see column 3 lines 15-30**), but does not disclose a bladder that comprises an outer layer made of fluorinated rubber composite. Petriello teaches an apparatus that does comprise a bladder that comprises an outer layer made of fluorinated rubber composite (**see column 2 lines 1-10**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by providing a bladder that comprises an outer layer made of fluorinated rubber composite as taught by Petriello in order to prolong the usefulness of the container.
9. As to **claims 2 and 10**, Gill teaches an apparatus wherein the bladder is flexible (**see column 3 lines 20-25**).
10. As to **claim 4**, Gill teaches an apparatus wherein the cap is adapted to screw into the fill port (**see column 3 lines 25-35**).
11. As to **claim 16**, Gill substantially discloses the claimed invention that comprises a method of at least partially filling the hydration system a fill port with a fluid, and closing the system by engaging the cap to the fill port (**see column 4 lines 10-25**), wherein the hydration

system comprises a bladder **1** configured to hold a fluid (**see abstract**), a spout **11** connected to the bladder and in communication with the inside of the bladder, wherein the spout comprises an output port and a fill port for filling the bladder with liquid (**see column 3 lines 25-35**); a cap **2** adapted to engage and close the fill port (**see column 3 lines 5-10**); and a tube **20** having a first end connected to the output port of the spout and having a second end connected to a fluid delivery fitting (**see column 3 lines 10-15**) and an inner layer of a material other than a rubber (**see column 3 lines 15-30**), but does not disclose a bladder that comprises an outer layer made of fluorinated rubber composite. Petriello teaches an apparatus that does comprise a bladder that comprises an outer layer made of fluorinated rubber composite (**see column 2 lines 1-10**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by providing a bladder that comprises an outer layer made of fluorinated rubber composite as taught by Petriello in order to prolong the usefulness of the container.

12. As to **claim 17**, Gill teaches a method step wherein the bladder is flexible (**see column 3 lines 20-25**).

13. As to **claim 19**, Gill teaches a method step wherein the cap is adapted to screw into the fill port (**see column 3 lines 25-35**).

14. As to **claims 3, 18 and 24**, Gill and Petriello substantially disclose claimed invention see rejection of claims 1, 16 and 23 above; but does not disclose an inner layer made of thermoplastic polyurethane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by designing the inner layer from thermoplastic polyurethane in order to prevent the stored liquid from being contaminated, since it

has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, **125 USPQ 416**.

15. As to claims 7, 22 and 25, Gill and Petriello substantially discloses the claimed invention, see rejection of claims 1, 16 and 23 above, but does not disclose a fluorinated rubber that comprises a polyamide reinforcing layer and a thermoplastic polymer layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill's invention by providing a fluorinated rubber that comprises a polyamide reinforcing layer and a thermoplastic polymer layer in order to prevent the stored liquid from being contaminated since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, **125 USPQ 416**.

16. Claims 5, 6, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gill et al. (US 6,247,619) in view of Petriello (US 3,229,014) as applied to claims 1 and 16 above, and further in view of Gardner et al. (US 6,032,831).

17. As to claims 5, 6, 20 and 21, Gill and Petriello substantially discloses the claimed invention; see rejections of claims 1 and 16 above, but does not disclose a spout that has a width greater than the height. Gardner teaches an apparatus that does provide a spout that has a width greater than the height (see figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gill/Petriello inventions by providing a spout that has a width greater than the height as taught by Gardner in order to take up less space and to prevent leakage.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
10/092,030
Art Unit: 3772

Page 9

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Art Unit 3772

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11/28/08